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2012 NOV 20 PM 5:08
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By: *[Signature]*
Clerk of Court
Mt. Rawson

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SANTA CLARA

11 SAN JOSE RETIRED EMPLOYEES
ASSOCIATION, HOWARD E. FLEMING,
12 DONALD S. MACRAE, FRANCES J.
OLSON, GARY J. RICHERT and
13 ROSALINDA NAVARRO,

14 Plaintiffs/Petitioners,

15 v.

16 CITY OF SAN JOSE; DOES 1 through 50,
inclusive,

17 Defendants/Respondents.

18 BOARD OF ADMINISTRATION FOR THE
19 FEDERATED CITY EMPLOYEES
RETIREMENT SYSTEM,

20 Real Party in Interest.
21

Case No. 112CV233660

NOTICE OF DEMURRER AND
DEMURRER AND IN THE
ALTERNATIVE MOTION TO STRIKE
BY THE CITY OF SAN JOSE

Date: January 17, 2012
Time: 9:00 a.m.
Dept: 2

BY FAX

Action Filed: October 5, 2012
Trial Date: None Set

22 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE that on January 17, 2013 at 9:30 a.m. in Department 2 of the
24 above-entitled Court, located at 191 North First Street San Jose, California 95113, or as soon
25 thereafter as the matter may be heard, defendant City of San Jose ("City") will demur to and in the
26 alternative move to strike portions of the Complaint filed by Plaintiffs/Petitioners San Jose
27 Retired Employees Association, Howard E. Fleming, Donald S. Macrae, Frances J. Olson, Gary J.
28 Richert and Rosalinda Navarros (collectively "Plaintiffs").

Case No. 112CV233660

NOTICE OF DEMURRER AND DEMURRER; NOTICE OF MOTION TO STRIKE AND MOTION TO STRIKE
BY CITY OF SAN JOSE

1 The City's demurrer is filed under Code of Civil Procedure section 430.10(e) because the
2 Complaint is not ripe for adjudication and therefore does not state facts sufficient to state a cause
3 of action. In the alternative the City moves under Code of Civil Procedure sections 435 and 436 to
4 strike the particular allegations from Plaintiffs' Complaint that are not ripe for adjudication and
5 therefore do not state facts sufficient to constitute a cause of action.

6 The City's demurrer and motion to strike will be based on this Notice and Motion, the
7 accompanying Memorandum of Points and Authorities, the accompanying Request For Judicial
8 Notice, all other pleadings and papers on file in this action, and such other and further argument
9 and matters subject to judicial notice as shall be received by the Court at the time of the hearing.

10 The City has provided a proposed order that grants the demurrer and in the alternative
11 identifies the paragraphs that relate to each of the allegations that the City contends should be
12 stricken from the Complaint.

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14
15 DATED: November 21, 2012

Respectfully submitted.

16 MEYERS, NAVE, RIBACK, SILVER & WILSON

17
18
19 By: 

Arthur A. Hartinger

Linda M. Ross

Attorneys for City of San Jose

1 **DEMURRER AND IN THE ALTERNATIVE MOTION TO STRIKE**

2 **Demurrer**

3 The City files this demurrer to Plaintiffs' entire Complaint, and to each Cause of Action,
4 under Code of Civil Procedure section 430.10(e) because the Complaint is not ripe for
5 adjudication and therefore does not state facts sufficient to constitute a cause of action.

6 **Demurrer to First Cause of Action for Injunctive Relief**

7 1. The First Cause of Action fails to state facts sufficient to constitute a cause of action.

8 **Demurrer to Second Cause of Action for Declaratory Relief**

9 2. The Second Cause of Action fails to state facts sufficient to constitute a cause of action.

10 **Demurrer to Third Cause of Action for Writ of Mandate.**

11 3. The Third Cause of Action fails to state facts sufficient to constitute a cause of action.

12 **Motion to Strike**

13 In the alternative the City moves under Code of Civil Procedure sections 435 and 436 to
14 strike the particular allegations from Plaintiffs' Complaint that are not ripe for adjudication and
15 therefore do not state facts sufficient to constitute a cause of action. The City moves to strike
16 Paragraph Nos. 22-25, 28-30, 35-36, 41-42, 47-48, 53-59, 61-62, 63-69.

17 The City demurs and moves to strike without leave to amend because the defects in
18 Plaintiffs' Complaint are not correctible.

19
20 DATED: November 21, 2012

Respectfully submitted.

21 MEYERS, NAVE, RIBACK, SILVER & WILSON

22
23 By: 

24 Arthur A. Hartinger

25 Linda M. Ross

26 Attorneys for City of San Jose
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28

1 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

2 At the time of service, I was over 18 years of age and **not a party to this action**. I am
3 employed in the County of Los Angeles, State of California. My business address is 633 W. 5th
Street, Suite 1700, Los Angeles, CA 90071.

4 On November 21, 2012, I served true copies of the following document(s) described as **NOTICE**
5 **OF DEMURRER AND DEMURRER AND IN THE ALTERNATIVE MOTION TO**
STRIKE BY THE CITY OF SAN JOSE on the interested parties in this action as follows:

6 Stephen H. Silver, Esq.
7 Richard A. Levine, Esq.
8 Jacob A. Kalinski, Esq.
9 Silver, Hadden, Silver, Wexler & Levine
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Attorneys for Plaintiffs/Petitioners
San Jose Retired Employees Association,
Howard E. Fleming, Donald S. Macrae, Frances
J. Olson, Gary J. Richert and Rosalinda Navarro

11 **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the office of the
12 addressee(s)

13 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
and correct.

14 Executed on November 21, 2012, at Oakland, California.

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16 
17 Jilala H. Foley
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